
(1963) 07 MAD CK 0027
In the Madras High Court

Nallathambi Nadar Chellakanu Nadar APPELLANT
Vs
Ammal Nadachi Chellathankom Nadachi and Others RESPONDENT

Date of Decision : 26-07-1963

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : (1964) 1 MLJ 181

Hon'ble Judges : S. Ramachandra Iyer, C.J;S. Ramachandra Aiyar, C.J;K.S. Venkataraman, J;G.R. Jagadisan, J

Bench : Full Bench

Judgement

S. Ramachandra Iyer, C.J.—This Second Appeal arises out of a suit for redemption brought by one co-mortgagor against another who had

earlier redeemed the mortgage and obtained possession of the mortgaged properties. The question which has necessitated a reference to the Full

Bench can be formulated thus:

Whether in order to constitute a valid acknowledgment of liability u/s 19 of the Indian Limitation Act, it is essential that the person acknowledging

should be under a liability in regard to the right in dispute at the time when he made the acknowledgment or whether it would be sufficient if he

were liable at the time of the suit or an application in respect of that liability ?

2. Before considering the question we shall refer to the facts which have given rise to this appeal. Madi Pillai, the original owner of the property

which forms the subject-matter of this litigation, created in the year 1869 (14-10-1044 M.E.) an usufructuary mortgage over it in favour of one

Raman Kumaran. The mortgagor's right in course of time devolved on two persons, Kanakkan Thampi and Sivasankaran Thampi. The latter who

was in the position of a mortgagor instituted a suit in the Sub-Court, Padmanabapuram (Original Suit No. 1161 of 1106) against the mortgagee for redemption. In due course he obtained a decree, paid up the mortgage money and obtained delivery of possession of the entire mortgaged property. This was on 11-12-1107 M.E., that is, in the year 1932. The half-right in the equity of redemption which vested in Kanakkan Thampi was subsequently purchased in the year 1946 from his successor-in-interest by the appellant who on 1st February, 1954, filed the suit which has given rise to this appeal for redemption of his share of the mortgaged property. Both the Courts below have held the claim to be barred by limitation.

3. The claim for redemption is made on the basis that the first respondent's predecessor-in-interest, Sivasankaran Thampi, on redeeming the entire mortgage was subrogated to the rights of the mortgagee so far as the appellant's half-share of the mortgaged property was concerned, albeit the mortgage, so far as the redeeming mortgagor's share was concerned, had been extinguished.

4. The property in dispute is situate in the Kanyakumari district, which prior to the re-organisation of States in the Indian Union formed part of the Princely State of Travancore and latterly of Travancore-Cochin State.

5. There was no enactment similar to the Transfer of Property Act, 1882, in the former State of Travancore, which could be applied to such mortgages. The rights of the co-mortgagors, inter se, on redemption by one of them have, therefore, to be decided on principles of justice, equity and good conscience. Applying those principles it has been recognised that a redeeming co-mortgagor will be subrogated to the rights of the mortgagee as against his own co-mortgagors. From that it would follow that a non-redeeming co-mortgagor will be entitled to redeem his share of the mortgaged property from the one who had redeemed it from the mortgagee. On that basis, the period of limitation for such a suit must be the same as in the case of a suit for redemption of the original mortgage.

6. The law relating to limitation of suits in the erstwhile Travancore State was governed by Travancore Limitation Regulation VI of 1100 ME.

Article 136 of that Regulation, corresponded to Article 148 of the Indian Limitation Act. That prescribed that a suit for redemption against the

mortgagee should be filed within a period of fifty years from the time when the right to redeem accrued.

7. On the terms of the mortgage in the present case it was redeemable by 14th February, 1856 (1056 M.E.). By the time the present suit was filed

more than fifty years had elapsed. The suit claim was, therefore, *prima facie* barred by limitation. Even if it were to be held that the appellant should

have a period of 12 years for redemption of his share of the mortgaged property from the date when the first respondent paid off the mortgage and

obtained possession of the property, the suit will still be out of time.

8. But it has been argued for the appellant that the plaint filed by Sivasankaran Thampi in Original Suit No. 1161 of 1106 (M.E.) for redemption of

the original mortgage containing, as it did, an averment as to the subsistence of the mortgage, it would constitute a sufficient acknowledgment of the

liability of the existence of the mortgage and that as, by reason of the subsequent redemption, the first respondent was subrogated to the rights

under the mortgagee, a fresh period of fifty years from the date of the plaint would be available for the filing of the present suit.

9. The plea that limitation had been saved by the existence of an acknowledgement does not appear to have been taken in the trial Court. While

the appeal was pending before the lower appellate Court, a copy of the plaint by Sivasankaran Thampi was produced as additional evidence and

it appears that such evidence had been admitted by the lower appellate Court and marked as Exhibit P-4. Along with the application for receipt of

additional evidence, the appellant also filed Interlocutory Application No. 1163 of 1958, for having the plaint suitably amended so as to include the

plea about the acknowledgment. Curiously enough that application which was posted along with the appeal appears to have been dismissed

following the dismissal of the latter. If in this Second Appeal before us we were to come to the conclusion that Exhibit P-4, the plaint filed by

Sivasankaran Thampi would constitute a valid acknowledgment, an occasion would arise to consider whether the application for amendment of the

plaint should be granted.

10. The only question now before us, therefore, is whether the plaint in Original Suit No. 1161 of 1106 M.E. is a sufficient acknowledgment of the

liability of the mortgage to be redeemed.

11. It must now be noticed that at the time when the plaint was filed, Sivasankaran Thampi was only in the position of a co-mortgagor and had not acquired the rights of the mortgagee by subrogation. Wherever there exists a right of redemption in the mortgagor, there will be corresponding to that right, a liability in the mortgagee to be redeemed. Article 136 of the Travancore Limitation Regulation prescribes, as we stated earlier, a period of fifty years for the exercise of that right by the mortgagor. If, however, there has been an acknowledgment of liability by the mortgagee within that time, the period of fifty years prescribed by Article 136 will have to be reckoned from the date of such acknowledgment. Section 19(1) of the Travancore Regulation VI states:

Where before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability or by some person who is either by operation of law or by contract entrusted with the management of the affairs of a family in so far as such acknowledgment relates to transactions binding on such family, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

12. Mr. Anantakrishna Nair, appearing for the appellant, has contended that Section 19 on its terms does not require that the person making the acknowledgment should be in the position of a mortgagee at the time when the acknowledgment was made and that it will be sufficient if he had some interest in the property then (for example, that of a mortgagor) and that what is necessary will be that he should be a "person liable at the time when the acknowledgment is sought to be used against him. Learned Counsel further argued that as by the date of the suit the redeeming co-mortgagor had stepped into the shoes of the mortgagee, an admission made by him before obtaining redemption could be used as an acknowledgment of liability by him. To support that contention reliance has been placed on the following observations of Stanley, C.J., in *Jugal Kishore v. Fakhru-ud-Din* ILR (1906) All. 90.

Section 19 of the Indian Limitation Act, 1877, does not require that the person making an acknowledgment should have an interest in the property,

in respect of which the acknowledgment was made at the time when the acknowledgment was given ; it prescribes that if before the period of limitation expires, an acknowledgment of liability or right has been made in writing signed by the parties against whom the property or right is claimed, a new period of limitation, will be computed from the time of the acknowledgment. The claim in this case is for partition and Alimuhammad who made the acknowledgment is part-owner of the property sought to be partitioned. " It does not lie in his mouth, we think, to set up the bar of the Statute of Limitation.

In that case Ali-mu-uddin had no interest in the property at the time when the acknowledgment was made, but he came to own an interest as a co-sharer subsequently. That subsisted on the date of suit. This view of the Allahabad High Court has been accepted by a learned Judge of this Court in Krishnappa Vs. Venkatappa and Others, where the son of one of the two partners acknowledged a debt due by the firm. Later, on the death of his father, he was sought to be made liable for the debt. It was held: So long as the fourth defendant is the person against whom the property or right is claimed, it does not matter whether at the moment of his making the acknowledgment, the claim could have been enforced.

13. The same view was taken by the Travancore-Cochin High Court in Mathdi v. Annamma ILR (1955) Tra. Co. 1224. In *Pena Parayan*

Ambalam Vs. Venkatachalam Chettiar and Others, . Ramaswami, J., gave expression to his inclination to accept the view taken in the above

cases, but it was not necessary for the learned Judge to decide the question finally for the purpose of disposal of the case before him. More

recently *Sadasiam, J.*, gave expression to quite a different view in *Mosa Devadasan Vs. Kalikunji and Others*, . The learned Judge appears to

have been under a misapprehension that Ramaswami, J., had based his conclusion on the decision of the Bombay High Court in *Fakirchand*

Jankiram v. Narmadabai Tulasiram ILR (1943) Bom. 701. This decision was overruled on appeal in *Fakirchand Jankiram v. Narmadabai Tulsiram*

ILR (1947) Bom. 827. It will be seen from the judgment of Ramasami, J., in *Pena Parayan Ambalam Vs. Venkatachalam Chettiar and Others*,

that the learned Judge was conscious of the fact that the decision of Lokhur, J., in *Fakirchand Jankiram v. Narmadabhai Tulsiram* ILR (1943)

Bom. 701 had been set aside on appeal. Although Sadasivam, J., has given no other reason for coming to the conclusion he did, we consider that

his view is consistent with the provisions of Section 19 of the Indian Limitation Act construed in the light of certain well understood principles.

14. Section 19 postulates a number of conditions to constitute a valid acknowledgment of liability. An acknowledgment to come within that section

must be in regard to a liability corresponding to the right in question. It should have been made before the period of limitation expired, and should

be evidenced in writing signed by the party against whom the right is claimed. There are in essence two essential requirements of the section : (1)

there should be an acknowledgment of liability in respect of the property or the right in question and (2) it should be by the party against whom

such property or right is claimed. Both in Jugal Kishore v. Faku-ud-Din ILR (1906) All. 90 and Krishnayya Vs. Venkatappayya and Others, the

determination of the question whether a statement would amount to an acknowledgment u/s 19 of the Limitation Act, appears to have been rested

only on the second among the two requisites set out above. This will be particularly clear from the observations of Jackson, J., in the latter case

which we have extracted above. The learned Judges in the two cases did not consider the precise import of the term acknowledgment of a liability

and see whether the particular statement before them did amount to such an acknowledgment. An acknowledgment is in respect of a liability ; it

implies that the person who acknowledges, admits or owns the liability. If a person who is a stranger to the liability makes a statement as to the

subsistence of the liability, it cannot amount to an acknowledgment in law because he cannot own or admit the liability.

15. In Pavayi and Others Vs. Palanivela Goundan and Others, a Full Bench of this Court held that a mortgagor who had lost all interest in the

mortgaged property and who had ceased to be personally liable for the mortgage debt could not validly, by any acknowledgment within the

meaning of Section 19, bind the person on whom his interest had devolved. That was no doubt a case where even at the time of the suit the

mortgagor was not liable, but that, however, cannot make any real distinction. An acknowledgment of liability, we have indicated above, pre-

supposes that the person acknowledging possesses some interest which can be bound by his statement. If he has no such interest, it will be a

misnomer to call his statement, an acknowledgment of liability. No debtor, for example, can be held to be bound by a mere acknowledgment by a

stranger. Again, it is a well-settled rule that an acknowledgment of liability must involve an admission of a subsisting jural relationship between the

parties and a consciousness and an intention of continuing such a relationship until it is lawfully terminated. In *Venkata v. Parthasaradhi* ILR (1892)

Mad. 220 : 3 M.L.J. 35. Muttuswami Iyer, J., in considering what an acknowledgment u/s 19 should be, said:

It is, therefore, necessary that upon a reasonable construction of the language used by the debtor in writing the relation of debtor and creditor must

appear to be distinctly admitted, that it must be admitted also to be a subsisting jural relationship and that an intention to continue it until it is lawfully

determined must also be evident.

That it is essential that there should be such a jural relationship, has been pointed out in a recent judgment of the Supreme Court in *Shapoor*

Fredoon Mazada v. D.P. Chamaria (1963) 1 S.C.J. 333 where Gajendragadkar, J., observed:

The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature of the specific

character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of a jural

relation-ship. Such intention can be inferred by implication from the nature of the admission and need not be expressed in words.

Where the person making an admission of liability is not a debtor, there can easily be no jural relationship between him and the person to whom he

is making the admission. If, therefore, in the present case at the time when Sivasankaran Thampi made the statement as to the subsistence of the

mortgage in his plaint, as he was not a mortgagee, there could be no jural relationship between him and the other party so as to constitute his

statement as an acknowledgment of liability on the part of the mortgagee as to the subsistence of the mortgage. Secondly the kind of jural

relationship that should exist is that the person making the acknowledgment should be under an existing liability to the other party.

16. Taking the facts of the present case, Sivasankaran Thampi, who made the statement, was not then in the position of a mortgagee as against the

person to whom he made the statement but the position was exactly the reverse. He was only a mortgagor. To hold that he could, by his own

statement, extend the period of limitation as against the mortgagee would mean that a mortgagor can acknowledge the liability of the mortgagee to

be redeemed. Again as we stated, for the purpose of Section 19 of the Limitation Act the acknowledgment relied on must purport to be of an

existing liability. In *Ittapan Kuthiravattat Nayar v. Nanu Sastri* ILR (1902) Mad. 34 : 15 M.L.J. 101 it was held that in order to constitute a valid

acknowledgment the statement should in itself import that the person making the acknowledgment was under an existing liability at the time.

17. The requirement that the person acknowledging should have an interest which would suffer by that acknowledgment at the time when it is made

is a real one and not based merely upon any principle of estoppel similar to the one contained in Section 42 of the Transfer of Property Act.

18. In *Fakirchand Jankiram v. Narmadabai Tulsiram* ILR (1947) Bom. 827 the Bombay High Court held that an acknowledgment u/s 19 of the

Limitation Act must be an admission of a present liability of the person acknowledging corresponding to a present right in someone else.

Mudholkar, J., (as he then was) was inclined to take the same view in *Jivan Lal v. Ram Rao* AIR 1951 Nag. 240. We ourselves are of the opinion

that the decision of Bombay High Court in *Fakirchand Jankiram v. Narmadabai Tulsiram* ILR (1947) Bom. 827 is one which is in accord with the

true meaning of the word acknowledgment in Section 19 of the Indian Limitation Act and that it must be accepted in preference to the decision in

Jugal Kishore v. Fakhr-ud-Din ILR (1906) All. 90. It must follow that neither the preference shown by *Ramaswami, J.*, in *Pena Parayan Ambalam*

Vs. Venkatachalam Chettiar and Others, nor the decision of *Jackson, J.*, in *Krishnayya v. Venkatappayya* AIR 1925 Mad. 134 can be regarded

as correct. We accept the decision of *Sadasivam J.*, in *Mosa Devadasan Vs. Kalikunji and Others*, and answer the question set out at the

beginning of this judgment accordingly.

19. The statement contained in the plaint filed by *Sivasankaran Thampi* that he was in the position of a mortgagor cannot, therefore, be relied on as

a valid acknowledgment u/s 19 of the Limitation Act, as it was not an admission of a liability by a person having the interest of the mortgagee at the

time when such a statement was made albeit that he stepped into the shoes of the mortgagee subsequently and was occupying such a position on the date of the suit. On that Conclusion Exhibit P-4 cannot be regarded as a valid acknowledgment; it follows that the appellant's right to redeem his share of the mortgaged property from the first respondent must be held to be barred by limitation. The appeal fails and is dismissed ; but in the circumstances of the case there will be no order as to costs.

G.R. Jagadisan, J.

20. I respectfully agree and I have nothing to add.

K.S. Venkataraman, J.

21. I have had the advantage of persuing before-hand the judgment just now pronounced by my Lord the Chief Justice, on behalf of himself and

Jagadisan, J. The view expressed by them in this judgment on the period of limitation available for the non-redeeming co-mortgagor in a suit for

redemption for his share of the property against the redeeming co-mortgagor follows the view expressed by them in Letters Patent Appeal No. 18

of 1961 Since reported in Valliamma Champaka Vs. Sivathanu Pillai and Others, . That view is that the non-redemming co-mortgagor has two

periods of limitation and he can avail himself of whichever is longer. The first is the period of fifty years from the date of the original mortgage (fifty

years being the period under Article 136 of the Travancore Limitation Regulation VI of 1100 M.E.); the second is the period of twelve years from

the time of redemption by the redeeming co-mortgagor. In Letters Patent Appeal No. 18 of 1961 Since reported in Valliamma Champaka Vs.

Sivathanu Pillai and Others, . I have expressed my respectful dissent from this view and expressed my view that the period of limitation for the non-

redeeming co-mortgagor would be simply a period of fifty years from the date of the redemption by the redeeming co-mortgagor, the reason being

that on redemption, the original mortgage has, by operation of law, become split up and become a mortgage in respect of the non-redeeming co-

mortgagor's share. The majority opinion in Letters Patent Appeal No. 18 of 1961 Since reported in Valliamma Champaka Vs. Sivathanu Pillai

and Others, will now prevail and I adopt it. According to that, the suit would be out of time unless the appellant-plaintiff can rely on the plaint filed

by Sivasankaran Thampi in Original Suit No. 1161 of 1106 M.E., u/s 19 of the

Regulation to extend the period of limitation. On that point, I respectfully agree with the view expressed by my Lord and Jagadisan, J., in this judgment. An acknowledgment means owning of some liability existing at the time, and at the time when Sivasankaran Thampi made the statement he had not yet redeemed the property and had not been subrogated to the position of the original mortgagee, and in respect of the right of redemption of the non-redeeming co-mortgagor. Sivasankaran Thampi had not yet become liable. An acknowledgment is much higher than a mere statement. Thus, the word acknowledgment itself gives the clue to the interpretation of the section.

22. This apart, the last words "" A fresh period of limitation shall be computed from the time when the acknowledgment was so signed "" emphasise the same idea. They connote that at the time when the alleged acknowledgment was made, the plaintiff (or his predecessor-in-title) should have been in a position to enforce the liability straightaway against the person who is alleged to have made the acknowledgment and that the acknowledgment extends the period of limitation further, making the acknowledgment the fresh starting point. It is this idea which underlies the words:

Signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability.

The alternative way in which these words are expressed clearly shows that their plain meaning is that the party making the alleged acknowledgment should himself have been under a liability at the time of the alleged acknowledgment, and if that is not the case, the person actually liable must have made the acknowledgment and that person must be the predecessor-in-title of the person against whom the alleged acknowledgment is finally sought to be fastened in the later suit. Thus the different parts of the section only emphasise the same idea in its different facets. According to this criterion, it is clear that the statement of Sivasankaran Thampi in O.S. No. 1161 of 1106 cannot amount to an acknowledgment within the meaning of Section 19(1). This apart, there is also a minor difficulty in the way of the appellant and that is, that the actual plaintiff in that case proceeds on the footing that Sivasankaran Pillai alone was the exclusive owner of the hypotheca.

23. In the result, I respectfully agree that the appeal may be dismissed without

costs.